

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Adopt the following regulation text:

Article 6.1. State Organic Program Appeal and Mediation Procedures

Section 1391. Appeal of Denial, Suspension or Revocation of Organic Certification

(a) A certification agent or the Secretary may propose denial, suspension or revocation of the organic certification of agricultural production and handling operations consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.662, Subsections (c), (d) and (e), revised as of January 1, 2006.

(b) An applicant for certification may appeal a certification agent's or Secretary's notice of denial of certification, and a certified operation may appeal a certification agent's or Secretary's notification of the proposed suspension or revocation, to the Secretary.

(c) Upon receipt of the appeal, the Secretary will evaluate the decision of the certification agent or Department to deny, suspend or revoke a certification in order to determine if there is sufficient evidence to proceed to initiate formal administrative action to do so.

(1) A decision by the Secretary to decline to initiate a formal administrative proceeding shall be deemed a granting of the appeal, and the Secretary shall communicate the decision in writing to the appellant and the certification agent.

(2) A decision by the Secretary to proceed to initiate a formal administrative proceeding shall be deemed a denial of the appeal, and the service of the accusation shall be construed as the communication of the denial to the appellant and the certification agent.

(d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code.

Reference: Sections 401, 46013.1, 46016.1, 46016.2, 46016.3, and 46016.4, Food and Agricultural Code.

Section 1391.1. Mediation of Denial, Suspension or Revocation of Organic Certification

(a) If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement.

(1) Any settlement agreement shall be in compliance with the requirements of the State Organic Program.

(2) The parties shall submit any proposed settlement agreement to the Secretary for review.

(3) Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.

(b) The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation may voluntarily agree upon the choice of a mediator that is not on the list.

(c) Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation. The mediator, the certification agent and the certified operation shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in conducting mediation by the Secretary as agreed to within the organic program contract or memorandum of understanding.

(d) Upon the commencement of a formal administrative proceeding by the Secretary, the parties shall be subject to the alternative dispute resolution procedures of the Office of Administrative Hearings.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code.

Reference: Sections 401, 46013.1, 46016.1, 46016.2, 46016.3, 46016.4, and 46016.5, Food and Agricultural Code.